

Before the
FEDERAL COMMUNICATIONS COMMISSION
 Washington, DC 20554

In the Matter of)	
Implementation of Section 621(a)(1) of)	
the Cable Communications Policy Act of 1984)	MB Docket No. 05-311
as amended by the Cable Television Consumer)	
Protection and Competition Act of 1992)	

COMMENTS OF THE CITY OF MILPITAS, CALIFORNIA

These Comments are filed by the City of Milpitas, California in support of the comments filed by the National Association of Telecommunications Officers and Advisors ("NATOA"). Like NATOA, the City of Milpitas believes that local governments can issue an appropriate local franchise for new entrants into the video services field on a timely basis, just as they have for established cable services providers. In support of this belief, we wish to inform the Commission about the facts of video franchising in our community.

Cable Franchising in Our Community

Community Information

The City of Milpitas is a city with a population of 65,000. Our franchised cable provider is Comcast of California. Our community has negotiated cable franchises since 1983.

Our Current Franchise

Our current franchise began in June of 2005 and expires in June of 2020. Under the statutory timeline laid out in the Federal Cable Act, the cable operator has a 6-month window beginning 36 months before the expiration of the franchise in which to request a renewal under the Federal Act. As a result, at this time we are not currently negotiating a franchise renewal with the incumbent provider.

Our franchise requires the cable operator to pay a franchise fee to the City in the amount of 5% of the cable operator's revenues. The revenues for franchise fee purposes are calculated based on the gross revenues of the operator, in accordance with the Federal Cable Act.

We require the cable operator to provide the following capacity for public, educational, and/or governmental ("PEG") access channels on the cable system. We currently have 1 channel

(or capacity) devoted to public access and 1 channel (or capacity) devoted to educational and government access. Based on a recent survey, 76% of residents had watched the local PEG channels

Our franchise requires that our PEG channels be supported in the following ways by the cable operator:

- One time capital grant of \$340,000
- On-going capital grants totaling \$200,000 over the life of the franchise
- Additional channel capacity based on utilization of existing PEG channels
- Relocation of PEG feed
- Provision of cable service to schools and public buildings

Our franchise contains the following requirements regarding emergency alerts:

- The City can generate emergency alerts on all channels
- The Government Channel is used to provide emergency instructions for the citizens of Milpitas
- These emergency alert requirements provide an important avenue of communication with our residents in the event of an emergency

The emergency alert system has proven helpful in the following situations: during heavy rains and local flooding information was provided on the locations of sand bag pick-up points; and local health authorities broadcast information on flu shots and West Nile virus prevention measures. As part of our local emergency response plan, residents have been instructed to watch the PEG channel for information and instructions in the event of a natural disaster or local emergency.

Our franchise contains the following customer service obligations, by which we are able to help ensure that the cable operator is treating our residents in accordance with federal standards and the terms it agreed to in its franchise:

- The franchise holder must conform to FCC customer services standards
- Standards are established for telephone answer times, service restoration, and installation appointments
- The franchise holder must maintain a local service office
- The franchise includes policies for subscriber refunds and application of credits

Our original franchise contained a reasonable build schedule for the cable operator. Our community now enjoys high-speed Internet service as well as digital cable as a result of the build out provisions. Additionally, our franchise requires that the cable operator currently provide service to all areas of our community.

Our franchise ordinance contains a "most-favored-nations" provision, which states that any franchise holder must provide the same level of support for PEG as existing franchise holders.

Our franchise contains the following insurance and bonding requirements:

- Throughout the term of the franchise, the Grantee shall maintain Comprehensive General Liability Insurance in the minimum amount of One Million Dollars (\$1,000,000.00) for bodily injury or death to any one person, and Three Million Dollars (\$3,000,000.00) for bodily injury or death of any two or more persons resulting from one occurrence, and Three Million Dollars (\$3,000,000.00) for property
- Grantee shall deliver to City a performance bond, in the amount of Fifty Thousand and No/100 Dollars (\$50,000.00)

The cable franchise grants the cable operator access to the public rights of way and compatible easements for the purpose of providing cable television service. Apart from the franchise, the cable provider is required to obtain a permit from the appropriate municipal office before it may access the public rights of way.

The franchise agreement provides for periodic audits of the franchise holders calculation of fees and for periodic technical reviews of the franchisees cable plant.

The franchise agreement provides for liquidated damages as an enforcement mechanism by which we are able to ensure that the cable operator is abiding by its agreement. The amounts of these damages are as follows:

- For failure to provide data, documents, reports and information as required by the Franchise fifty dollars (\$50) per day per each separate violation not to exceed \$2,000 for any single violation
- For failure to test, analyze and report on the performance of the Cable System as required by Ordinance, one hundred dollars (\$100) per day not to exceed \$5,000 for any violations
- For failure to comply with PEG Access requirements, two hundred and fifty dollars (\$250) per day not to exceed \$7,000 for any violation
- For violation of customer service standards to include stated standards for installations, correction of service interruptions and failure to provide stated credits, the penalty shall be two hundred and fifty dollars (\$250.00) per occurrence.
- For failure to answer Subscriber calls as required by the franchise in, any quarter where the Grantee performs equal to or greater than eighty-five (85%) and less than ninety percent (90%), the Grantee shall pay the Grantor five- hundred dollars (\$500); in any quarter where the Grantee performs equal to or greater than seventy-five percent (75%) and less than eighty-five percent (85%), the Grantee shall pay the Grantor one-thousand dollars (\$1,000); in any quarter where the Grantee performs equal to or greater than sixty-five percent (65%) and less than seventy-five percent (75%), the Grantee shall pay the Grantor three-thousand dollars (\$3,000); and in any quarter where the Grantee performs less than sixty-five percent (65%), the Grantee shall pay the Grantor five thousand dollars (\$5,000).

The Franchising Process

Under the law, a cable franchise functions as a contract between the local government (operating as the local franchising authority) and the cable operator. Like other contracts, its terms are negotiated. Under the Federal Cable Act it is the statutory obligation of the local government to determine the community's cable-related needs and interests and to ensure that these are addressed in the franchising process – to the extent that is economically feasible. However derived (whether requested by the local government or offered by the cable operator), once the franchise is approved by both parties the provisions in the franchise agreement function as contractual obligations upon both parties.

Our current franchise provides that changes in law which affect the rights or responsibilities of either party under this franchise agreement will be treated as follows:

- If any federal or state law or regulation shall require or permit City or Grantee to perform any service or act or shall prohibit City or Grantee from performing any service or act which may be in conflict with the terms of this Franchise, then as soon as possible following knowledge thereof, either party shall notify the other of the point in conflict believed to exist between such law or regulation. Grantee and City shall conform to state and federal laws and regulations and rules regarding cable communications as they become effective.

Competitive Cable Systems

Our community was approached once in 2002 by a competitor provider, but the provider chose not to enter into any formal discussions. The City has not denied any provider the opportunity to serve in our community and does have mechanisms in place to offer the same or a comparable franchise to a competitor upon request.

Conclusions

The local cable franchising process functions well in the City of Milpitas. As the above information indicates, we are experienced at working with cable providers to both see that the needs of the local community are met and to ensure that the practical business needs of cable providers are taken into account.

Local cable franchising ensures that local cable operators are allowed access to the rights of way in a fair and evenhanded manner, that other users of the rights of way are not unduly inconvenienced, and that uses of the rights of way, including maintenance and upgrade of facilities, are undertaken in a manner which is in accordance with local requirements. Local cable franchising also ensures that our local community's specific needs are met and that local customers are protected.

Local franchises thus provide a means for local government to appropriately oversee the operations of cable service providers in the public interest, and to ensure compliance with applicable laws. There is no need to create a new Federal bureaucracy in Washington to handle matters of specifically local interest.

Finally, local franchises allow each community, including ours, to have a voice in how local cable systems will be implemented and what features (such as PEG access, institutional networks or local emergency alerts, etc.) will be available to meet local needs. These factors are equally present for new entrants as for existing users.

The City of Milpitas therefore respectfully requests that the Commission do nothing to interfere with local government authority over franchising or to otherwise impair the operation of the local franchising process as set forth under existing Federal law with regard to either existing cable service providers or new entrants.

Respectfully submitted,

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